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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appl. No. : 10/037,942 Confirmation No. 7761
Applicant (s) : Alain M. Sagnard et al
Filed : January 3, 2002
TC/A.U. : 1772
Examiner : Jane J. Rhee
Title : BUILDING PANEL HAVING AT LEAST TWO PANEL DOMAINS
OF DIFFERENT AVERAGE COMPRESSIVE STRENGTH
Docket No. : 61301A
Customer No. : 00109

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BRIEF FOR APPELLANT - FEE SHEET

This is an appeal to the Board of Appeals from the action of the Primary Examiner finally rejecting Claims 1-12 and 15-22, in the above-identified patent application.

Please charge the \$500.00 fee to our Deposit Account No. 04-1512. If this amount is incorrect, please charge or credit our account accordingly. One original copy of this sheet is enclosed.

Respectfully submitted,

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Alexandria, VA 22313-1450

Sir:

BRIEF FOR APPELLANT

This is an appeal from the final rejection of Claims 1-12 and 15-22 mailed 5
October 2004.

REAL PARTY IN INTEREST

The Real Party in Interest in this Appeal is Dow Global Technologies Inc.

RELATED APPEALS AND INTERFERENCES

At this time there are no related appeals or interferences.

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STATUS OF CLAIMS

Claims 1-12 and 15-22 are pending and stand as rejected under a final rejection. Claims 13 and 14 were previously cancelled. Appellant appeals the rejection of Claims 1-12 and 15-22.

STATUS OF AMENDMENTS

Appellant filed no amendments after the pending final rejection. The Examiner's advisory action indicates amendments were entered after final rejection. Appellant can identify no such entered amendments and neither requested nor authorized any amendments subsequent to the pending final rejection.

SUMMARY OF INVENTION

The present claims recite a building panel (page 4, lines 14-32) that is useful for inserting into any of a number of cavities (*e.g.*, page 1, lines 16-23; element 115 of Figures 2A-C as identified on page 12, lines 29-34; element 185 of Figures 4A-B as identified on page 14, lines 4-5) that may have different sizes, shapes and obstacles (*e.g.*, page 3, lines 23-27). The building panel contains at least two panel domains (page 5, line 22- page 6, line 3), each with an essentially homogeneous compressive strength and an average compressive strength (page 6, lines 10-24). The building panel has at least two panel domains having different compressive strengths (page 8, lines 10-21); is essentially free of a combination of hollow and solid foam strands (page 18, lines 9-14); has an essentially uniform panel thickness (page 4, lines 12-21); fits fully within a cavity defined by cavity walls (*e.g.*, page 1, lines 16-21; elements 110 and 120 of Figures 2A-C as described on page 12, lines 28-29; elements 180 and 190 of Figures 4A-B as identified on page 14, lines 4-5 and 12-13); has a compressive recovery that supplies sufficient pressure against the cavity walls to frictionally retain the building panel within the cavity (page 9, lines 25-35); has an edge containing a panel domain extending from a primary face to an opposing face at that edge (*see, e.g.*, page 18, lines 18-29; elements 20 and 30 in Figure 1; elements 60 and 100 in Figures 2A-C; element 134 in Figure 3A; elements 144, 146, 148 and 150 in Figure 3B; elements 162 and 172 in Figures 4A-B; and Example 2 on page 21, lines

1-7); and, if the panel has at least two adjacent panel domains containing fibrous material with a fiber orientation, the fiber orientation of one panel domain is non-orthogonal to the fiber orientation of at least one adjacent panel domain (page 6, line 30 – page 7, line 8).

Claim 4 includes another limitation on the invention that is pertinent to the present appeal. Claim 4 requires that at least one panel domain of the building panel is a conformable panel domain (page 8, lines 22-28) that allows the panel to reversibly bend from a planar to non-planar configuration (page 11, lines 30-34; Figures 2A-C as described on page 12, lines 22-35).

ISSUES

The first issue is whether Claims 1-12, 15, 21 and 22 are patentable under 35 U.S.C. 103(a) over Grinshpun (US 6,226,943). The first issue contains three sub-issues:

1(a) -- Whether a building panel that simultaneously fits fully within “a cavity” defined by cavity walls and when in said cavity, the building panel has a compressive recovery that supplies sufficient pressure against the cavity walls to frictionally retain the building pane within the cavity is obvious in view of Grinshpun.

1(b) – Whether a panel that simultaneously fits “fully within” a cavity defined by the cavity walls and when in said cavity, the building panel has a compressive recovery that supplies sufficient pressure against the cavity walls to frictionally retain the building panel within the cavity is obvious in view of Grinshpun.

1(c) – Whether a building panel that contains at least two panel domains having different average compressive strengths wherein at least one panel domain is a conformable panel domain that allows the panel to reversibly bend from a planar to a non-planar configuration is obvious in view of Grinshpun, specifically the teaching on column 4, lines 65-66 in combination with Figure 6 of Grinshpun.

The second issue is whether Claims 16-20 are patentable under 35 U.S.C. 103(a) over Grinshpun in view of Malone (US 4,824,720).

GROUPING OF CLAIMS

Claims 1-3, 5-12 and 15-22 stand or fall together. Claim 4 stands separately. Appellant believes Claim 4 is patentable for the same reasons as Claim 1 (from which Claim 4 depends) and for the additional limitation that requires the building panel to have a conformable panel domain that allows the panel to reversibly bend from a planar to a non-planar configuration.

ARGUMENT

Issue 1: Whether Claims 1-12, 15, 21 and 22 are patentable under 35 U.S.C. 103(a) over Grinshpun (US 6,226,943).

The Office rejected Claims 1-12, 15, 21 and 22 as being obvious over Grinshpun. The Examiner contends that Grinshpun discloses a panel meeting all of the requirements of Claim 1-12, 15, 21 and 22 except for the required specific pressure of 100 – 200,000 Newton-per-square-meter that the panel applies against cavity walls (*see*, Office Action dated 4/13/2004 on pages 3-4, sustained in the Final Rejection of 10/5/2004 and Advisory Action of 12/6/2004). The Examiner concludes that it is obvious based on Grinshpun to provide a panel with a compressive recovery sufficient to exert such a pressure against cavity walls.

Appellant believes the Office is in error in rejecting Claim 1 as obvious over Grinshpun for failing to establish even a *prima facie* case of obviousness for any of at least two reasons: (a) Grinshpun fails to teach, suggest or motivate one of ordinary skill in the art to even consider a building panel that simultaneously fits fully within “a cavity defined by cavity walls” and that is frictionally retained within the cavity by pressure that the panel applies against the cavity walls; and (b) Grinshpun fails to teach, suggest or motivate one of ordinary skill in the art to even consider a building panel that fits “fully within” a cavity defined by cavity walls and that is frictionally retained within the cavity by pressure that the panel applies against the cavity walls. In fact, such a panel is necessarily contrary to the teachings of Grinshpun and renders

the Grinshpun panel unsatisfactory for intended use and as having a changed principle of operation. For these same reasons, Appellant finds the rejection of Claims 2-12, 15, 21 and 22 as unpatentable under 35 U.S. C. 103(a) over Grinshpun in error since these claims depend from and are necessarily narrower in scope than Claim 1.

Appellant believes the rejection of Claim 4 as unpatentable under 35 U.S.C. 103(a) over Grinshpun is further in error since Grinshpun fails to disclose or in any way motivate a skilled artisan to even consider a building panel having a conformable panel domain that allows the panel to reversibly bend from a planar to a non-planar configuration. As such, the Office has failed to establish a *prima facie* case that Claim 4 is obvious in view of Grinshpun. For this additional reason, Claim 4 can stand as patentable apart from the remaining claims.

This section of the brief first identifies requirements for establishing a *prima facie case* of obviousness and then addresses in order the two reasons of error (sub-issues “a” and “b”) regarding Claim 1-12, 15, 21 and 22 and, as a third sub-issue (“c”), the reason of error specific to Claim 4.

Requirements for a Prima Facie Case of Obviousness

The MPEP defines requirements for establishing a *prima facie* case of obviousness in sections 2142 and 2143. A *prima facie* case of obviousness requires, among other things, establishing that the prior art suggests the desirability of the claimed invention:

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art.

MPEP§2143.01, third paragraph.

Furthermore, the proposed modification to a prior art reference cannot “render the prior art unsatisfactory for its intended use” or “change the principles operation of a reference.” (MPEP§2143.01, clauses 5 and 6).

Issue 1(a): Whether a building panel that simultaneously fits fully within “a cavity defined by cavity walls” and when in said cavity, the building panel has a compressive recovery that supplies sufficient pressure against the cavity walls to

frictionally retain the building panel within the cavity is obvious in view of Grinshpun.

Claim 1, as well as each pending claim of Appellant's application, specifies a building panel that fits fully within "a cavity defined by cavity walls" and that applies sufficient pressure against "the cavity walls" to frictionally retain the panel within the cavity. This wording requires that the cavity walls defining the cavity into which the panel fits and the cavity walls against which the panel applies pressure must be one and the same. Furthermore, Appellant established that the building panel of Claim 1 must fit within a single cavity in a response dated 15 June 2004. Rather than restate that explanation here, since it does not appear to be in dispute, Appellant refers back to the response and incorporates it herein by reference. (In brief, unless the specification indicates otherwise, "a" as in "a cavity" takes a singular meaning).

The Examiner contends that Grinshpun discloses a foam that both fits fully within a cavity defined by cavity walls and that applies sufficient pressure to the cavity walls so to be frictionally retained within the cavity and points in Grinshpun to column 5, lines 2-5 (*see*, Office Action dated 4/13/2004); column 3, lines 1-5 and Figure 6 (*see*, Office Action dated 10/5/2004) and Figure 6 in combination with Figure 1A (*see*, Advisory Action dated 12/6/2004). The Examiner asserts that the frame defined by elements 1 of Figure 1A in Grinshpun defines a cavity (Advisory Action, throughout) and that the clamping action of the Grinshpun panel onto support members serves to satisfy the requirement that the panel exert sufficient pressure against cavity walls to frictionally retain the panel within a cavity (Advisory Action, page 3). However, in supporting such an argument, the Examiner is inconsistent by simultaneously requiring the support elements of Grinshpun to serve as cavity walls and denying that the support elements are cavity walls.

In the Advisory Action dated 12/6/2004, the Examiner relies on the framework (element 1 in Figure 1A) of Grinshpun as the cavity walls defining the cavity in which the Grinshpun panel fits. The framework (element 1) is distinct from the support members (elements 2) in Figure 1A. The support members (elements 2 in Figure 1A) cannot qualify as the same cavity walls as the framework (element 1). In fact, the Examiner precisely denies that the support elements serve as cavity walls by arguing that the support members do not define the cavity into which the panel fits (*see*

Advisory Action, throughout) and even goes as far as to assert that the support members are not part of the framework at all but rather part of the panel (*see*, Advisory Action, pages 2-3). Nonetheless, as previously stated, the Examiner relies on the support elements for the framework component against which the panel applies pressure sufficient to frictionally retain within the cavity. If the support members (elements 2) do not define the cavity into which the panel fits, then frictional retention of the panel from the clamping action of the panel around a support member does not qualify as pressure against “the cavity walls” – as is necessary in each of Appellant’s Claims. The support members cannot serve as the cavity walls for Appellant’s pressure requirement but not for defining the cavity – Appellant requires the same cavity walls in both claim elements.

If the Office wishes to define support members (elements 2) as the cavity walls defining the cavity into which the panel is to fully fit, then the panel of Grinshpun is outside Appellant’s claims by necessarily extending outside of “a cavity” defined by the cavity walls against which the panel applies pressure. In order to clamp onto a support element, (*see, e.g.*, figures 2B, 4B and 4C in Grinshpun) the panel of Grinshpun must extend to both sides of a support element. If the support element serves as a cavity wall, the panel necessarily extends beyond a single cavity defined by that cavity wall – contrary to the requirements of Claim 1. As such, the panels of Grinshpun do not satisfy the requirement of either fitting into “a cavity” (a single cavity) or fitting “fully within” a cavity (*see*, further discussion on fitting “fully within” under Issue 1(b), below) and, therefore, are outside the scope of Appellant’s claims.

The panels of Grinshpun can only satisfy the requirements of fitting within a cavity (though not necessarily “fully within” the cavity, *see* discussion under Issue 1(b), below) defined by cavity walls and applying pressure against the cavity walls if the Grinshpun panel extends to the framework (element 1 of Figure 1A) and applies sufficient pressure against the framework so as to be frictionally retained in that framework. Such teaching is foreign to Grinshpun. Grinshpun teaches that the panels contain a “cutout” on their ends to allow one panel to extend over an intervening support member and abut against an adjoining panel within a framework (*see, e.g.*, column 3, line 10 through column 4, line 10; Figure 2A and B; and note the cutout

present in Figure 3A and Figure 4A). Such teaching suggests multiple panels are necessary to span a framework within the context of Grinshpun. Furthermore, Grinshpun does not offer any suggestion of a panel applying any pressure against either an *intervening* support member or the framework. As such, a panel that fits within a cavity defined by cavity walls and that applies pressure against those same cavity walls sufficient to retain the panel within the cavity is foreign to Grinshpun.

Appellant fails to find in Grinshpun any teaching, suggestion or motivation to even consider a panel that simultaneously fits within a single cavity defined by cavity walls and that is frictionally retained within the cavity by applying pressure against those same cavity walls. Since such limitations are necessary in each of Appellant's claims, Appellant believes none of their claims, in particular Claims 1-12, 15, 21 and 22, are even *prima facie* obvious in view of Grinshpun.

Issue 1(b): Whether a panel that simultaneously fits “fully within” a cavity defined by the cavity walls and when in said cavity, the building panel has a compressive recovery that supplies sufficient pressure against the cavity walls to frictionally retain the building panel within the cavity is obvious in view of Grinshpun.

Claim 1, and each claim of Appellant's application, requires that the claimed building panel fit “fully within” a cavity defined by cavity walls – the same cavity walls against which the panel applies pressure.

It is important to establish proper meaning of claim terms. During examination, the Office is to interpret claim meanings as broadly as possible, in view of any limitation that the specification or one of ordinary skill in the art would place on the interpretation and an interpretation of a word must be consistent with the word's well known usage. (*see*, MPEP §2111.01 first, third and fourth paragraphs). When the specification does not precisely define a term, a standard dictionary may be used to define the claim. (Irah H. Donner, “*Patent Prosecution: Practice & Procedure Before the U.S. Patent Office*”, Third Edition, Bureau of National Affairs, Inc., Washington, D.C., 2003, page 1152 citing to *In re Barr*, 444 F.2d 588, 170 USPQ 339 (C.C.P.A. 1971), (The CCPA used Hackh's Chemical Dictionary to define “phenyl radical” in an absence of a definition in the specification)).

Claim 1 of Appellant's application specifies a building panel that fits "fully within" a cavity. Appellant's application does not provide an express definition for "fully within," beyond that shown in the Figures; nor is such a phrase a term of art within the building industry. Therefore, the plain meaning of this phrase is properly elucidated from a standard dictionary. As such, Appellant provides copies from Webster's Third New International Dictionary (Unabridged) and Merriam-Webster's Collegiate Dictionary, 10th ed. showing definitions for "fully," "within," and "cavity."

Fully. Each source provides two possible definitions for the word "fully": (1) Completely, or in a full manner or degree; and (2) at least. The second definition, in each source, provides an exemplary usage. It is important to note that each exemplary usage for the second definition identifies a portion of a whole (*i.e.*, "fully half the class" and "fully nine tenths of us"). That is, the second definition of "fully" (*i.e.*, "at least") requires identifying that portion of an object to which "fully" refers. The phrase "where said panel fits fully within a cavity defined by cavity walls" identifies no less than the entire panel. There is no reference, *e.g.*, to "fully half the panel" or "fully two thirds the panel," as is necessary for the meaning "at least" to apply. Therefore, the only reasonable definition applicable to "fully" in the context of the present Claim is the first definition: "Completely."

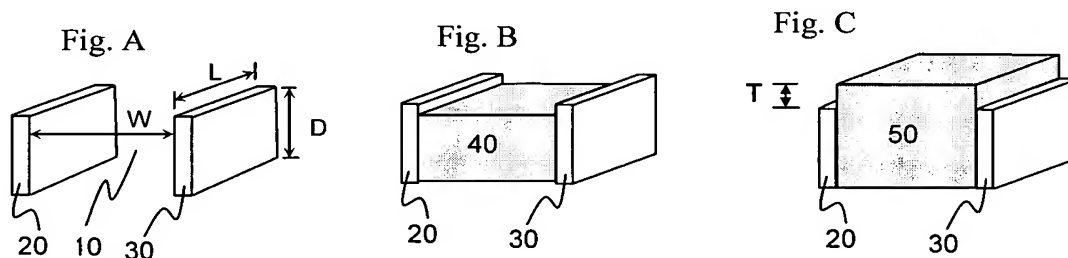
Within. The term "within" is a preposition in the pertinent phrase of Claim 1. Each source provides three possible definitions. The second in each is temporal and does not apply in the context of Claim 1. The remaining two indicate a meaning of enclosed by, contained by or to the inside of.

Cavity. Cavity is a three-dimensional discontinuity in the substance of a mass or body; a space within a mass; a space hollowed out." In other words, a cavity is a three-dimensional discontinuity or space defined by something.

In view of these definitions, Appellant contends that the plain meaning of "fully within a cavity defined by cavity walls" is: completely contained by or inside of the three-dimensional space defined by cavity walls. Therefore, Claim 1, as well as each Claim of the present invention, requires a building panel that fits completely

within (is completely contained by or inside of) the three-dimensional space defined by cavity walls and, in the context of Claim 1, those cavity walls are the same walls against which the panel applies pressure in order to establish frictional retention within the cavity.

Figs. A-C, below, help illuminate the plain meaning of “fully within a cavity defined by cavity walls.” Figure A, below, illustrates cavity 10 defined by cavity walls 20 and 30. Cavity 10 is a three-dimensional space having dimensions W, L and D in the width, length and depth dimensions, respectively, as defined by cavity walls 10 and 20. Figure B illustrates element 40 that is “fully within” cavity 10 since it is completely contained by and inside of the three-dimensional space defined by cavity walls 20 and 30. Figure C illustrates element 50 that is not “fully within” cavity 10 since a portion of thickness “T” extends outside of cavity 10 by protruding in the depth dimension out of the three-dimensional space defined by cavity walls 20 and 30.

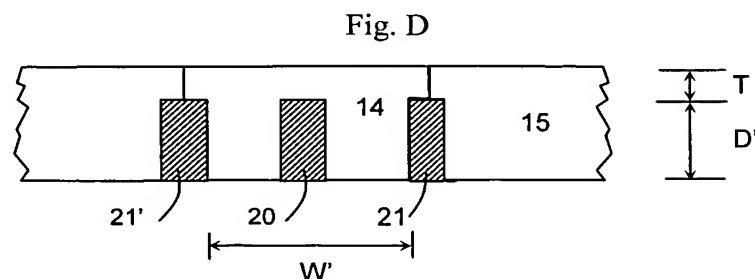


Each of Appellant’s figures are consistent with this interpretation by showing a panel that is fully contained by or inside of a three-dimensional space defined by cavity walls, *i.e.*, a panel fully within a cavity defined by cavity walls (*see*, Fig. 2C, Fig. 4B, and Fig. 5B). Each of these figures illustrate a building panel fully within a cavity – no portion of the building panel extends outside of the three dimensional space defined by the cavity walls in the width, length or depth dimension.

The Examiner asserts that the panels of Grinshpun fit into a framework such as that defined by elements 1 in Figure 1A of Grinshpun and then simply concludes that the Grinshpun panel fits fully within the cavity defined by the framework. (*see*, Advisory Action page 5 and Final Rejection dated 10/5/2004, page 2). Appellant finds the panel of Grinshpun to necessarily extend out of any cavity defined by cavity walls in at least the depth dimension, if not both depth and width dimensions,

rendering the Grinshpun panel unable to fit “fully within” a cavity defined by cavity walls. As such, Appellant finds the teaching of Grinshpun to fall short of teaching, suggestion or motivating one of ordinary skill in the art to even consider a panel that fits fully within a cavity defined by cavity walls, particularly cavity walls against which the panel applies sufficient pressure to frictionally retain the panel in the cavity. Furthermore, Appellant finds that modifying a Grinshpun panel to fit “fully within” a cavity defined by cavity walls and to apply enough pressure against those cavity walls to frictionally retain the panel in the cavity renders the Grinshpun panel unsatisfactory for its intended use and changes the principle operation of Grinshpun’s teaching.

Figures 2A and 2B of Grinshpun illustrate the general shape of the polymer foam sheet (*i.e.*, “panel”) for the invention of Grinshpun. The general shape in these figures is not simply an embodiment, but illustrates the general shape of the invention (*see*, column 3, lines 10-11). By necessary design, the panels of Grinshpun have grooves into which vertical support members of a framework fit (*see, e.g.*, column 2, line 53 – column 3, line 9, as well as each figure). Importantly, the grooves in which the vertical members fit have a depth that is necessarily less than the thickness of the panel. The panels clamp around support elements that fit into the grooves. The design of the Grinshpun foam sheets (*i.e.*, panels) further implement an end groove tab that extends above and over vertical support members against which the panel terminates. Figure 2B, partially reproduced below as Fig. D (label 21’ added for clarity), shows panel 14 butting up to panel 15 at intervening support member 21. Panel 14 clamps around support member 20 and fits between support members 21 and 21’. Panel 14 extends above the support members 20, 21 and 21’ by a thickness “T” in a depth dimension. Of critical importance is the observation that Panel 14 necessarily extends outside of a cavity defined by support elements 21 and 21’ in both depth (D’) and width (W’) dimensions.



Considering Grinshpun further, only three options are available in defining cavity/panel correlations in Grinshpun relative to the panel 14 of Figure 2B: (1) the panel fits fully within a cavity defined by a framework such as element 1 in Figure 1A, which is not illustrated in Figure 2B; (2) the panel fits fully within a cavity defined by the outermost support elements (e.g., 21 and 21' for panel 14 in Fig. D); or (3) the panel fits fully within a cavity defined by a cavity wall comprising the support member about which the panel clamps and applies pressure.

In regards to option (1), there is no teaching in Grinshpun suggesting that any panel even contacts the outermost framework (element 1 of Figure 1A), let alone applies sufficient pressure to frictionally retain the panel within that framework. Therefore, it can only be with impermissible use of hindsight from Appellant's application that one may assume such a pressure is present in conjunction with the Grinshpun teaching regarding the framework (element 1 of Figure 1A).

Furthermore, there is no teaching, suggestion or motivation in Grinshpun that the outermost framework has a depth any different from the support members and so the panel of Grinshpun is also expected to protrude an amount T beyond the depth dimension of the framework. Since the panel of Grinshpun extends beyond any cavity defined by the support members by a magnitude "T" in the depth dimension, a skilled artisan would expect the same to be true of a cavity defined by an outer framework. As such, a skilled artisan would conclude that the Grinshpun panel extends outside of the three-dimensional space defined by the framework (*i.e.*, not expect the panel of Grinshpun to fit "fully within" the cavity defined by the framework). Such a conclusion is reinforced by Grinshpun's teaching that the major side of the foam sheet that does not have grooves forms an interior or exterior wall of a building. (column 6, lines 13-18 of Grinshpun). According to Grinshpun, the wall is formed by the portion of the sheet having a thickness T, which stands proud of the building framework. An artisan understands that a wall completely covers a framework (the framework does not protrude through or remain exposed through a wall). Therefore, the foam sheet (panel) of Grinshpun cannot fit fully within a cavity defined by the framework or the framework would extend through them all – contrary to the teaching of Grinshpun that a thickness T of the panel forms a wall.

Grinshpun fails to render the invention of any of Appellant's claims obvious under option 1 for two reasons: (1) there is no suggestion, teaching or motivation to believe that the panel of Grinshpun applies sufficient pressure against the outermost framework so as to frictionally retain the panel within a cavity defined by the framework; and (2) there is no suggestion, teaching or motivation to believe that the panel of Grinshpun fits "fully within" a cavity defined by the outermost framework. Actually, to have the Grinshpun panel fit fully within a cavity defined by the foam would both render the Grinshpun panel unsatisfactory for its intended use and change the principle operation of the Grinshpun reference since the Grinshpun panel must extend a thickness T over the framework to form a wall.

In regards to option 2, where outermost support elements are cavity walls, the teachings of Grinshpun fail to teach, suggest or motivate one of ordinary skill in the art to consider Appellant's invention for the same reasons as under option 1. Grinshpun teaches that panel 14 extends partially over support elements 21 and 21'. The panel necessarily protrudes a thickness "T" in the depth dimension out of the cavity defined by elements 21 and 21'. The Grinshpun panel also extends over the outermost support elements with tabs – thereby protruding beyond the cavity defined by the outermost support elements in the width dimension. Since the Grinshpun panels extend beyond a cavity defined by the outermost support elements in both the depth and width dimensions the panels of Grinshpun fail to be enclosed by a three-dimensional space (*i.e.*, "fit fully" within a cavity) defined by the outermost support elements. To design a panel that does fit fully within such a cavity would be contrary to the necessary design of Grinshpun.

In regards to option 3, Grinshpun does teach that the panel applies pressure against the support member around which it clamps. However, the panel of Grinshpun by necessary design protrudes in both the width and depth dimension outside of any cavity defined by the support member over which it clamps (consider panel 14 and element 20 in Fig. D, above). As such, Grinshpun is also outside Appellant's claims scope under option 3.

Appellant fails to find in Grinshpun any teaching, suggestion or motivation to even consider a panel that simultaneously fits "fully within" (*i.e.*, is completely contained by or inside of) a single cavity defined by cavity walls and that is

frictionally retained within the cavity by applying pressure against those cavity walls, and in fact finds such limitations contrary to the teachings of Grinshpun. Since such limitations are necessary in each of Appellant's claims, Appellant believes none of their claims, in particular Claims 1-12, 15, 21 and 22, are *prima facie* obvious in view of Grinshpun.

Issue 1(c): Whether a building panel that contains at least two panel domains having different average compressive strengths wherein at least one panel domain is a conformable panel domain that allows the panel to reversibly bend from a planar to a non-planar configuration is obvious in view of Grinshpun, specifically the teaching on column 4, lines 65-66 in combination with Figure 6 of Grinshpun.

Claim 4 depends from Claim 1. Claim 1 specifies a building panel comprising at least two panel domains having different average compressive strengths. Claim 4 further requires that the panel contains at least one conformable panel domain that allows the panel to reversibly bend from a planar to a non-planar configuration. Appellant contends that Claim 4 is patentable over Grinshpun for the same reasons cited under issues 1(a) and 1(b). Furthermore, Appellant contends that the Office is in error in finding the additional limitation of Claim 4 *prima facie* obvious in view of Grinshpun.

The Examiner notes that Grinshpun teaches a panel that has both rigid and conformable panel domains and immediately concludes that the conformable panel domain "by definition allows the panel to reversibly bend or bend in any direction from a planar to a non planar or any other configuration." (Advisory Action, page 6. *see also*, Final Rejection dated 10/5/2004 on page 3). The Examiner uses as support teachings in Grinshpun on column 4, lines 65-66 and Figure 6.

The mere presence of a conformable panel domain in combination with a non-conformable domain *does not necessarily allow* the panel to reversibly bend from a planar to a non-planar configuration, particularly a combination of such panel domains as taught in the cited portions of Grinshpun. In order for a conformable domain to "allow" a panel to reversibly bend, the panel must be able to bend along that conformable domain. The Examiner identifies domains 61-66 as conformable domains in the panel of Figure 6. The panel cannot bend along any of those domains

in order to reversibly go from a planar to a non-planar configuration. The Examiner appears to recognize this in the argument set forth in the Advisory Action, addressing how bending can occur along a rigid domain (*see*, Advisory Action pages 6-7). If bending occurs along a rigid domain, the conformable domain is not “allowing” the panel to reversibly bend. The Examiner has not supported a conclusion that the mere presence of a conformable domain in combination with a non-conformable domain necessarily allows a panel to reversibly bend from a planar to non-planar configuration. Furthermore, the teachings in Grinshpun fail to suggest a panel having a combination of conformable and rigid domains such that the conformable domain “allows” the panel to reversibly bend from a planar to non-planar configuration.

Grinshpun teaches the use of compressible domains in combination with rigid domains only in a configuration where the compressible domains are adjacent to grooves to allow for compression and clamping onto vertical support members in a construction framework (*see, e.g.*, Figures 3-6 and column 3, lines 52-55). An entire panel in Grinshpun can be compressible (column 4, lines 6-7). However, when in combination with a rigid foam, only that portion of the panel adjacent to a groove must be compressible (column 4, lines 7-10).

Appellant fails to find any teaching, suggestion or motivation in Grinshpun that would motivate a skilled artisan to consider a panel with both a rigid and conformable domain where the panel can bend along a conformable domain. On the contrary, each embodiment of the Grinshpun panel that has both rigid and compressible domains has a rigid domain forming at least one complete face of the panel. As such, any bending of the panel must be along a rigid domain and not a compressible or conformable domain. One desired embodiment in Grinshpun specifically requires both a rigid foam backing and a support layer along a face of the panel (*see* column 4, lines 27-30 and Figure 4). Such a configuration can only serve to *hinder* the panel from bending into a non-planar configuration.

The portion of Grinshpun relied on by the Examiner, as well as the rest of Grinshpun fails to teach, suggest, or motivate one of ordinary skill in the art to even consider a panel that has a combination of a conformable domain and a rigid domain such that the conformable domain “allows” the panel to reversibly bend from a planar to non-planar configuration. Furthermore, such a panel would “render the prior art

unsatisfactory for its intended use” and “change the principle operation” of Grinshpun by eliminating the rigid face of a panel as required by Grinshpun. Therefore, Appellant believes Grinshpun fails to render the invention of Appellant’s Claim 4 even *prima facie* obvious for these reasons, as well as for the reasons argued under issues 1(a) and (b).

Issue 2: Whether Claims 16-20 are patentable under 35 U.S.C. 103(a) over Grinshpun in view of Malone (US 4,824,720).

The Office rejected Claims 16-20 as being obvious over Grinshpun in view of Malone. Claims 16-20 depend from Claim 1. The Examiner relies on Grinshpun for the same reasons cited under Issue 1 for Claim 1 and only cites Malone in regards to additional limitations in Claims 16-20 claims (*see*, Office Action dated 4/13/2004 on pages 5-6).

Appellant believes the Office is in error rejecting Claims 16-20 as obvious over Grinshpun in view of Malone for the same reasons cited above under Issues 1(a) and 1(b). Malone offers teachings to coalesced foam strands and fails to remedy the building panel differences between Grinshpun and Appellant’s panel of Claim 1. As such, differences identified under Issues 1(a) and 1(b) between Claim 1 (and each claim depending from Claim 1, including Claim 16-20) and Grinshpun persist even in view of a combination of Malone with Grinshpun. Therefore, Appellant believes Claims 16-20 are patentable over Grinshpun in view of Malone.

ADDITIONAL REMARKS

The Examiner raised for the first time in the Advisory Action dated 16 December 2004 a challenge to the clarity of Claim 1. Such a challenge first raised in an Advisory Action cannot be deemed a valid ground for final rejection since the challenge would constitute a new ground for rejection that is not based on a new claim amendment (*see*, MPEP §706.07(a), second paragraph). Nonetheless, Appellant desires to address the challenge to defeat it as a possible future ground for rejection.

The Examiner contends that the phrase “when in a cavity” renders Claim 1 unclear since one cannot tell whether Appellant is claiming a cavity with the building

panel or if Appellant is claiming that the building panel domains are capable of being in a cavity (*see*, Advisory Action, page 1, third paragraph).

Proper analysis of the clarity of a claim requires reading the claim in light of (a) the content of particular application disclosure; (b) teaching of the prior art; and (c) interpretation given by one possessing ordinary skill in the art. (*see*, MPEP§2173.02).

Appellant first notes that the Examiner is miss-quoting Claim 1 since the quoted phrase does not exist in Appellant's Claim 1. The closest language to that cited by the Examiner is in part (d) of Claim 1. The pertinent section reads: "wherein said panel: ... (d) fits fully within a cavity defined by cavity walls and, when in said cavity, the building panel has compressive recovery that supplies sufficient pressure against the cavity walls to frictionally retain the building panel within the cavity."

One of ordinary skill in the art would understand from the context of Claim 1, particularly in view of teaching in Appellant's application, that the claimed invention is a building panel and that reference to a cavity is solely for the purpose of defining the compressive recovery character of the panel and to give dimensional perspective to the panel when in use. The preamble of Claim 1 refers to "A building panel" and not a building panel and a cavity. Furthermore, Claim 1 only discusses a cavity in the context of the compressive recovery character and dimensional perspective (*i.e.*, fits fully within a cavity) of the panel. As Appellants argued earlier in this brief, the pertinent limitation in Claim 1 refers to the building panel being capable of fitting fully within a cavity defined by cavity walls and that while within that cavity the panel is capable of applying sufficient pressure against those cavity walls so to remain frictionally retained in the cavity. Therefore, Appellant contends that the only reasonable interpretation of Claim 1 recognizes that the cavity is not part of the invention but is rather present in order to define the properties of the panel.

CONCLUSION

Appellant believes that the Office has failed to support even a *prima facie* case of obviousness against Claims 1-12 and 15-22 over Grinshpun and a combination of Grinshpun and Malone for at least one of the following reasons:

- (1) Neither Grinshpun nor Malone teach or suggest a building panel that simultaneously fits within a single cavity defined by cavity walls and that

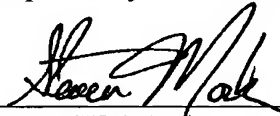
is frictionally retained within the cavity by applying pressure against the cavity walls. The teachings in Grinshpun only reveal a panel applying pressure to a support member over which the panel clamps. As such, the panel cannot fit within a single cavity defined by that support member.

- (2) Neither Grinshpun nor Malone teach or suggest a building panel that simultaneously fits "fully within" a cavity defined by cavity walls and that is frictionally retained within the cavity by applying pressure against the cavity walls. The teachings in Grinshpun reveal a panel that necessarily extends in at least one dimension outside of a cavity defined by any cavity walls against which the panel applies pressure.

Furthermore, Appellant believes that the Office has failed to establish that Claim 4 is even *prima facie* obvious over Grinshpun for any of the above reasons and, or additionally, because Grinshpun fails to teach or suggest in any way that would motivate a skilled artisan to even consider a panel having a combination of rigid and conformable domains in an arrangement where the conformable domain *allows* the panel to reversibly bend from a planar to a non-planar configuration.

In view of these arguments, Appellant respectfully requests reversal of all rejections of Claims 1-12 and 15-22 and issuance of a notice of allowance for these same claims.

Respectfully submitted,



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akm

APPENDIX

CLAIMS ON APPEAL:

1. (Previously amended) A building panel comprising at least two panel domains, wherein each panel domain has an essentially homogeneous compressive strength and an average compressive strength; wherein said panel:

- (a) has at least two panel domains having different average compressive strengths;
- (b) is essentially free of a combination of hollow and solid foam strands;
- (c) has an essentially uniform panel thickness;
- (d) fits fully within a cavity defined by cavity walls and, when in said cavity, the building panel has a compressive recovery that supplies sufficient pressure against the cavity walls to frictionally retain the building panel within the cavity, said pressure being 100 Newtons-per-square-meter or more and 200,000 Newton-per-square-meter or less;

and wherein, if said panel has at least two adjacent panel domains containing fibrous material with a fiber orientation, the fiber orientation of one panel domain is non-orthogonal to the fiber orientation of at least one adjacent panel domain and wherein the panel has an edge containing a panel domain extending from a primary face to an opposing face at that edge.

2. (Original) The panel of Claim 1, wherein at least two domains differ in average compressive strength by at least 5%.

3. (Original) The panel of Claim 1, wherein at least one panel domain is a conformable panel domain that, when compressed, reduces at least one dimension of the panel thereby allowing insertion of the panel into a cavity; wherein the panel also has a compressive recovery that causes frictional retention of the panel within the cavity.

4. (Original) The panel of Claim 1, wherein at least one panel domain is a conformable panel domain that allows the panel to reversibly bend from a planar to a non-planar configuration.

5. (Original) The panel of Claim 1, wherein the panel has a primary face, a face opposing the primary face, a panel thickness, and a slit penetrating to a depth less than the panel thickness traverses the primary face or the face opposing the primary face.

6. (Original) The panel of Claim 1, wherein the panel has alternating conformable and rigid panel domains.

7. (Original) The panel of Claim 1, wherein the panel has a perimeter and said perimeter comprises at least one conformable panel domain.

8. (Original) The panel of Claim 1, wherein the panel has a conformable panel domain along at least one edge.

9. (Original) The panel of Claim 1, wherein the panel domains are bands.

10. (Original) The panel of Claim 1, wherein the panel has at least one edge that comprises a tongue or groove profile.

11. (Original) The panel of Claim 1, wherein at least one panel domain is a polymeric foam.

12. (Original) The panel of Claim 11, wherein each panel domain comprises a polymeric foam.

13. (Cancelled)

14. (Cancelled)

15. (Original) The panel of Claim 11, wherein at least one panel domain has an open cell content of 5 percent or more, according to American Society for Testing and Materials method D2856-A.

16. (Original) The panel of Claim 1, wherein at least one panel domain comprises coalesced polymeric foam strands.

17. (Original) The panel of Claim 16 wherein the coalesced polymeric foam strands comprise polypropylene.

18. (Original) The panel of Claim 16, wherein at least one panel domain comprises coalesced polymeric foam strands having interstrand spaces.

19. (Original) The panel of Claim 1, wherein the panel comprises coalesced polypropylene foam strands having an average cell diameter within a range of from 0.01 millimeters to 10 millimeters, and having a density within a range of from 5 kilograms per cubic meter to 100 kilograms per cubic meter; wherein at least one panel domain has an open cell content of 5 percent or more, according to American society for Testing and Materials method D2856-A.

20. (Original) The panel of Claim 11, wherein the foam's average cell diameter is within a range of from 0.1 millimeters to 4 millimeters, the foam's density is within a range of from 5 kilograms per cubic meter to 50 kilograms per cubic meter,

and wherein the foam has an open cell content of 50% or greater, according to American society for Testing and Materials method D2856-A.

21. (Previously presented) The panel of Claim 1 wherein at least one edge of the panel is a conformable domain.

22. (Previously presented) The panel of Claim 1 wherein the panel domains extend through the thickness of the panel.

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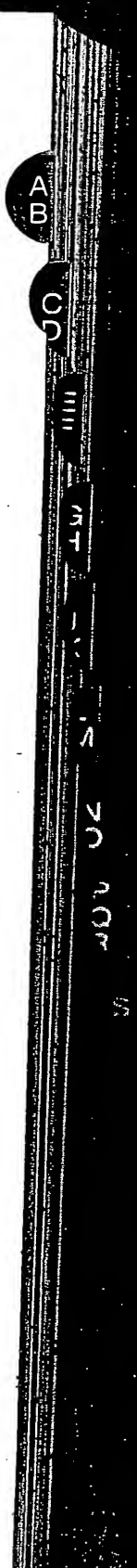
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fr. L. fugitivus
flee) (14c) 1

running away or intending flight (~ slave) (~ debtor) 2 : moving from place to place : WANDERING 3 a : being of short duration b : difficult to grasp or retain : ELUSIVE c : likely to evaporate, deteriorate, change, fade, or disappear (dyed with ~ colors) 4 : being of transient interest (~ essays) SYN see TRANSIENT — fu-gi-tive-ly adv — fu-gi-tive-ness n

fugitive n (14c) 1 : a person who flees or tries to escape; esp : REFUGEE 2 : something elusive or hard to find
fugleman (f'yū-gəl-mən) n [modif. of G. Flügelmann, fr. Flügel wing + Mann man] (1804) 1 : a trained soldier formerly posted in front of a line of soldiers at drill to serve as a model in their exercises 2 : one at the head or forefront of a group or movement

fu-gu (f'yū-gū) n [jp] (1909) : any of various very poisonous puffers (sense 2a) that contain tetrodotoxin and that are used as food in Japan after the toxin-containing organs are removed
fugue (f'yū-g) n [prob. fr. It. fuga flight, fugue, fr. L. flight, fr. fugere] (1597) 1 a : a musical composition in which one or two themes are repeated or imitated by successively entering voices and contrapuntally developed in a continuous interweaving of the voice parts b : something that resembles a fugue esp. in interweaving repetitive elements 2 : a disturbed state of consciousness in which the one affected seems to perform acts in full awareness but upon recovery cannot recollect the deeds — fugue vb — fugu-ist (f'yū-gist) n

führer or fuhrer (f'yūr-ər, f'r-ər) n [G. (der) Führer, lit. the leader (title assumed by Adolf Hitler), fr. MHG vüerer, fr. vüeren to lead, bear, fr. OHG fuoren to lead; akin to OE foran to go — more at FARE] (1934) : LEADER 2 : TYRANT
fu-ji (f'yū-jī) n [Fuji, mountain in Japan] (1925) : a spun silk clothing fabric in plain weave orig. made in Japan

ful (f'ul) suffix, sometimes -ful-er; sometimes -ful-est [ME, fr. OE, fr. full adj] 1 : full of (prideful) 2 : characterized by (peaceful) 3 : having the qualities of (masterful) 4 : tending, given, or liable to (helpful)

ful n suffix : number or quantity that fills or would fill (roomful)
fula or Fulah (f'ul-ə) n, pl Fulas or Fulah or Fulahs (1832) 1 : a member of a mainly pastoral African people dispersed over savanna and desert from Senegal to eastern Sudan 2 : the language of the Fula people
Fula-ni (f'ul-jā-nē, f'ul-ā) n, pl -ni or -nis (1860) 1 : FULA 1; esp : the Fula of northern Nigeria and adjacent areas 2 : FULA 2

ful-crum (f'ul-kram, f'ul-ā) n, pl fulcrums or ful-cra (f'ul-kra) [LL, fr. L. fulcrum, fr. fulcrare to prop — more at BALK] (1674) 1 a : PROP; specif : the support about which a lever turns b : one that supplies capability for action 2 : a part of an animal that serves as a hinge or support
ful-fill or full-fill (f'ul-fil) also fəl(fil-) v full-filled; full-filling [ME fulfillen, fr. OE fulfyllan, fr. full + fyllan to fill] (bef. 12c) 1 archaic : to make full : FILL (her subtle, warm, and golden breath . . . ~s him with beatitude — Alfred Tennyson) 2 a : to put into effect : EXECUTE b : to bring to an end c : to measure up to : SATISFY 3 a : to convert into reality b : to develop the full potentialities of SYN see PERFORM — full-fill-er n — full-fill-ment (f'ul-fil-mənt) n

ful-gent (f'ul-jent, f'ul-ā) adj [ME, fr. L. fulgens, prp. of fulgere to shine; akin to L. flagrare to burn — more at BLACK] (15c) : dazzlingly bright : RADIANT — ful-gent-ly adv
ful-gu-rant (f'ul-gyā-rant, f'ul-jā, f'ul-ā) adj (1647) : flashing like lightning; also : BRILLIANT

ful-gu-ra-tion (f'ul-gyā-rā-shən, f'ul-jā, f'ul-ā) n [L. fulguratio-, fulguratio sheet lightning, fr. fulgurare to flash with lightning, fr. fulgur lightning, fr. fulgere] (1633) 1 : the act or process of flashing like lightning 2 : ELECTRODISSEICATION — ful-gu-rate (f'ul-gyā-rāt, f'ul-jā, f'ul-ā) v

ful-gu-rite (f'ul-gyā-rīt, f'ul-jā, f'ul-ā) n [ISV, fr. L. fulgur] (1834) : an often tubular vitrified crust produced by the fusion of sand or rock by lightning
ful-gu-rous (f'ul-gyā-rəs) adj [L. fulgur] (1865) : flashing with lightning
ful-ham (f'ul-həm) n [alter. of earlier fullan, perh. fr. full + -one] (ca. 1592) archaic : a loaded die

ful-i-gi-nous (f'yū-lī-jī-nəs) adj [LL. fuliginosus, fr. L. fuligin-, fuligo soot; akin to Lith dūlis cloud, vapor, and prob. to L. fumus smoke more at FUME] (1621) 1 a : SOOTY b : OBSCURE, MURKY 2 : having a dark or dusky color — ful-i-gi-nous-ly adv
full (f'ul) also fāl (f'ul) adj [ME, fr. OE; akin to OHG fol full, L. plenus full, plere to fill, Gk pleres full, plethain to be full] (bef. 12c) 1 : containing as much or as many as is possible or normal (a bin ~ of corn) 2 a : complete esp. in detail, number, or duration (a ~ report) (my ~ share) (~ gone a ~ hour) b : lacking restraint, check, or qualification (~ retreat) (~ support) c : having all distinguishing characteristics (~ enjoying all authorized rights and privileges (~ member) (~ professor) d : not lacking in any essential : PERFECT (in ~ control of your senses) 3 a : being at the highest or greatest degree : MAXIMUM (~ speed) (~ strength) b : being at the height of development (~ bloom) 4 : rounded in outline (a ~ figure) 5 a : possessing or containing a great number or amount ~ used with of (a room ~ of pictures) (~ of hope) b : having an abundance of material esp. in the form of gathered, pleated, or flared parts (a ~ skirt) c : rich in experience (a ~ life) 6 a : satisfied esp. with food or drink b : large enough to satisfy (a ~ meal) 7 archaic : completely weary 8 : having both parents in common (~ sisters) 9 : having volume or depth of sound (~ tones) 10 : completely occupied esp. with a thought or plan (~ of their own concerns) 11 : possessing a rich or pronounced quality (a food of ~ flavor) — full-ness also ful-ness (f'ul-nəs) n — full of it : not to be believed

syn FULL, COMPLETE, PLEINARY, REPLETE mean containing all that is wanted or needed or possible. FULL implies the presence or inclusion of everything that is wanted or required by something or that can be held, contained, or attained by it (a full schedule). COMPLETE applies when all that is needed is present (a complete picture of the situation). PLEINARY adds to COMPLETE the implication of fullness without qualification (given pleinary power). REPLETE implies being filled to the brim or to satiety (replete with delightful details).
full adv (bef. 12c) 1 a : VERY, EXTREMELY (knew ~ well they had lied to me) b : ENTIRELY (swung ~ around — Morley Callaghan) 2 : STRAIGHT, SQUARELY (got hit ~ in the face) 3 — used as an intensive (wound up winning by a ~ four strokes — William Johnson)

full n (14c) 1 a : the highest or fullest state or degree (the ~ of the moon) b : the utmost extent (enjoy to the ~) 2 : the requisite or complete amount (paid in ~)

full vi (1794) of the moon : to become full ~ vt : to make full in sewing

full vt [ME, fr. MF fouler to trample under foot, fr. ML fullare to walk, trample, full, fr. L. fullo fuller] (14c) : to shrink and thicken (woolen cloth) by moistening, heating, and pressing
full-back (f'ul-bak) n (1887) 1 : an offensive football back used primarily for line plunges and blocking 2 : a primarily defensive player stationed nearest the defended goal (as in soccer or field hockey)

full blast adv (1909) : at full capacity : with great intensity
full-blood (f'ul-bləd) adj (1812) : FULL-BLOODED 1
full-blood n (1846) : a full-blooded individual
full-blood-ed (f'ul-bləd-əd) adj (1774) 1 : of unmixed ancestry : PUREBRED 2 : FLORID, RUDDY (of ~ face) 3 : FORCEFUL (~ prose style) 4 a : lacking no particulars : GENUINE b : containing fullness of substance : RICH — full-blood-ed-ness n

full-blown (f'ul-blōn) adj (1601) 1 a : fully mature b : being at the height of bloom c : FULL-FLEDGED 2 : possessing all the usual or necessary features (a general philosophy, if not a ~ ideology, is emerging — W. H. Jones)
full-bodied (f'ul-bəd-əd) adj (1686) 1 : having a large body 2 of a beverage : imparting to the palate the general impression of substantial weight and rich texture 3 : having importance, significance, or meaningfulness (~ study of literature)

full circle adv (1879) : through a series of developments that lead back to the original source, position, or situation or to a complete reversal of the original position — usu. used in the phrase come full circle

full-dress adj (1761) : involving attention to every detail in preparation or execution (a ~ rehearsal) (a ~ investigation)

full dress n (1790) : the style of dress prescribed for ceremonial or formal social occasions

full-er (f'ul-lər) n [ME, fr. OE fullere, fr. L. fullo] (bef. 12c) : one that fuls cloth

full-er (f'ul-lər) n (fuller (to form a groove in)) (ca. 1864) : a blacksmithing hammer for grooving and spreading iron

full-er-ene (f'ul-lər-ēn) n [R. Buckminster Fuller; fr. the resemblance of the molecules to the geodesic domes designed by Fuller] (1988) : any of a class of closed hollow aromatic carbon compounds that are made up of twelve pentagonal and differing numbers of hexagonal faces

full-er's earth n (f'ul-lər; fr. its earlier use as fulling agent) (15c) : an earthy substance that consists chiefly of clay mineral but lacks plasticity and that is used as an adsorbent, a filter medium, and a carrier for catalysts

full-er's teal n (15c) : TEASEL 1a
full-fash-ioned (f'ul-fā-shənd) adj (1883) : employing or produced by a knitting process for shaping to conform to body lines (~ hosiery)

full-fledged (f'ul-fledjd) adj (1883) 1 : fully developed : TOTAL, COMPLETE (a ~ war) 2 : having attained complete status (~ lawyer)

full house n (1887) : a poker hand containing three of a kind and a pair — see POKER illustration

full-length (f'ul-lɛŋ(k)th) adj (1760) 1 : showing or adapted to the entire length esp. of the human figure (a ~ mirror) (a ~ dress) 2 : having a length as great as that which is normal or standard for an object of its kind (a ~ play)

full marks n pl (1916) chiefly Brit. : due credit or commendation
full moon n (bef. 12c) : the moon with its whole apparent disk illuminated

full-mouthed (f'ul-maʊthd, f'maʊtht) adj (1577) 1 : having a full complement of teeth (~ cws) 2 : uttered loudly

full nelson n (ca. 1922) : a wrestling hold gained from behind an opponent by thrusting the arms under the opponent's arms and clasping the hands behind the opponent's head — compare HALF NELSON

full-out (f'ul-əʊt) adj (14c) : COMPLETE, TOTAL
full-scale (f'ul-skāl) adj (1933) 1 : identical to an original in proportion and size (~ drawing) 2 a : involving full use of available resources (a ~ biography) (~ war) b : TOTAL, COMPLETE (a ~ musical renaissance — Current Biog.)

full-ser-vice (f'ul-sər-vəs) adj (1957) : providing comprehensive service of a particular kind (a ~ bank)

full-size (f'ul-sīz) adj (1832) 1 : having the usual or normal size of its kind 2 : having the dimensions 54 inches by 75 inches (about 1.4 by 1.9 meters) — used of a bed; compare KING-SIZE, QUEEN-SIZE, TWIN-SIZE

full tilt adv (1596) : PERIOD 5a
full-time adv (1898) 1 : at high speed
full-time adj (1898) 1 : employed for or involving full time (~ employees) 2 : devoting one's full attention and energies to something (a ~ gambler) — full-time adv

full time n (1898) : the amount of time considered the normal or standard amount for working during a given period

full-tim-er (f'ul-ti-mər) n (1864) : a person who works full-time
fully (f'ul-i) adv (bef. 12c) 1 : in a full manner or degree : COMPLETELY 2 : at least (~ nine tenths of us) usage see PLENTY

ful-mar (f'ul-mər, mār) n [of Scand origin; akin to ON fulmār fulmar, fr. full foul + mār gull — more at MEW] (1698) : a seabird (Fulmarus glacialis) of colder northern seas closely related to the petrels; also : a related bird (F. glacialis) of circumpolar distribution in colder southern seas

ful-mi-nant (f'ul-mə-nənt, f'ul-ā) adj (1602) : FULMINATING 3
ful-mi-nate (f'ul-mī-nāt) vb -nat-ed; -nat-ing [ME, fr. ML fulminatus, pp. of fulminare, fr. L. to strike (of lightning), fr. fulmin-, fulmen lightning; akin to L. flagrare to burn — more at BLACK] v (15c) : to utter or send out with denunciation ~ vi : to send forth censures or invectives — ful-mi-na-tion (f'ul-mā-nā-shən, f'ul-ā) n

fulminate n [fulminic acid, fr. L. fulmin-, fulmen] (1826) : an often explosive salt (as mercury fulminate) containing the group —CNO

about \ə/ kitten, F table \ər/ further \ə/ ash \ə/ ace \ə/ mop, mar \ə/ out \ə/ chin \ə/ bet \ə/ easy \ə/ go \ə/ hit \ə/ ice \ə/ job \ə/ sing \ə/ go \ə/ law \ə/ boy \ə/ thin \ə/ the \ə/ loot \ə/ foot \ə/ yet \ə/ vision \ə/ k, n, ce, oe, ue, ue, \ see Guide to Pronunciation

ic breastbone in a bird
their median or lower
the halfbacks line up
ick does
e of a wish: HOPEFUL
ith wishes rather than
ess n
a desire esp. symbol-
isms
if reality to what one
of what one wants to

2: regarded as having
well)
alistically unobtainable

[2wash] (1786) 1: a

pl. of washy] (ca. 1693)
FECTUAL 2: lacking in
is n
(as of hay or straw), 2
ak (a ~ of smoke) (c
irl) (a ~ of a smile) 3
lE] adv — wisps—mess

make wisps of (a cigarette)
—Raymond Chandler
in to ~ into her eyes

isp: INSUBSTANTIAL

17
3
15
15
15
15
15



dge, OE *witan* to know
g power: INTELLIGENCE
warning his five ~s (the
son) b (1): mental
mental capability and
s of perception or judg-
ingly disparate things
banter or persiflage. (2)
r apt humor
imaginatively perceptive
or persiflage — at one's
for a means of solving a

PARTEE mean a mode of
IT suggests the power to
felicity or ingenuity and
yful wit). HUMOR implies
nical, and the absurd in
ut bitterness (a sense of
ression in which the in-
comingly expressed (the
on frequently in the form
en to heartless sarcasm).
cues conduct, doctrine,
ore often through irony.
ss). REPARTEE implies the
wittily (a dinner guest

viser; akin to OHG *wiza*
the witenagemot
sc., wizard & wice, fem.
ngle divination, and per-
i: 1: one who practicing
evil or familiar; SORCE-
r: HAG 3: a charm-
"witch-like" adj — witchy

witchcraft 2 archaic: to
i: DOWSE
a: the use of sorcery or
r with a familiar 2: an
r of magic usu. in a prime

(1546) 1 a: the prac-
ecraft 2: an irresistible
e mixture (a witches' brew
th)

witch-es'-broom \wi-chəz-brūm, -brūm\ n (1881): an abnormal
tufted growth of small branches on a tree or shrub caused esp. by fungi
or viruses

witches' Sabbath n (ca. 1676): a midnight assembly of witches, dev-
ils, and sorcerers for the celebration of rites and orgies

witch-grass \wich-gras\ n [prob. alter. of *quitch* (grass)] (1790) 1
: QUACK GRASS 2 [witch]: a No. American grass (*Panicum capillare*)
with slender brushy panicles that is often a weed on cultivated land

witch hazel \wich-hā-zəl\ n [witch, a tree with pliant branches, fr.
ME *wyche*, fr. OE *wice*; prob. akin to OE *wican* to yield — more at
WEAK] (ca. 1542) 1: any of a genus (*Hamamelis* of the family
Hamamelidaceae, the witch-hazel family) of shrubs or small trees with
slender-petaled yellow flowers borne in late fall or early spring; esp
: one (*H. virginiana*) of eastern No. America that blooms in the fall 2
: an alcoholic solution of a distillate of the bark of a witch hazel (*H.*
virginiana) used as a soothing and mildly astringent lotion

witch-hunt \wich-hənt\ n (1885) 1: a searching out for persecution
of persons accused of witchcraft 2: the searching out and deliberate
harassment of those (as political opponents) with unpopular views —
witch-hunter n — witch-hunting n or adj

witching \wi-čing\ n (bef. 12c): the practice of witchcraft; SORCERY
witching adj (14c): of, relating to, or suitable for sorcery or supernat-
ural occurrences (the very ~ time of night — Shak.)

witch of Agnesi \in-ā-yā-zē\ n [Maria Gaetana Agnesi 17199 Ital.
mathematician; *witch*, trans. of *It versiera* cubic curve (influenced by *It*
versiera female demon)] (1875): a plane cubic curve that is symmetric
about the y-axis and approaches the x-axis as an asymptote that is
constructed by drawing lines from the origin intersecting an upright
circle tangent to the x-axis at the origin and taking the locus of points
of intersection of pairs of lines parallel to the x-axis and y-axis each pair
of which consists of a line parallel to the x-axis through the point where
a line through the origin intersects the circle and a line parallel to the
y-axis through the point where the same line through the origin inter-
sects the line parallel to the x-axis through the point of intersection of
the circle and the y-axis and that has the equation $x^3 = 4a^2(2a - y)$
— called also *witch*

witch-weed \wich-wēd\ n (1904): any of a genus (*Striga*) of yellow-
flowered Old World plants of the snapdragon family that are damaging
root parasites of grasses (as sorghum and maize) and that include one
(*S. lutea*) which is an introduced pest in parts of the southeastern U.S.

wite \wit\ wī-wit-ed; wīt-ing [ME, fr. OE *witan*; akin to OHG *wizan*
to blame, OE *witan* to know] (bef. 12c) chiefly Scot.: BLAME

wite n (13c) chiefly Scot.: BLAME, RESPONSIBILITY
wite-na-ge-mot or wite-na-ge-mote \wi-tə-nə-gə-mōt, -yō-mōt\ n
[OE *witena gemit*, fr. *witena* (gen. pl. of *wita* sage, adviser) & *gemit*
gemo] (bef. 12c): an Anglo-Saxon council made up of a varying num-
ber of nobles, prelates, and influential officials and convened from time
to time to advise the king on administrative and judicial matters

with \wīth, wīth, wāth, wāth\ prep [ME, against, from, with, fr. OE;
akin to OE *withan* against, OHG *wider* against, back, Skt *wi* apart] (bef.
12c) 1 a: in opposition to: AGAINST (had a fight ~ his brother) b
: so as to be separated or detached from (broke ~ her family) 2 a —
used as a function word to indicate a participant in an action, transac-
tion, or arrangement (works ~ his father) (a talk ~ a friend) (got into
an accident ~ the car) b — used as a function word to indicate the
object of attention, behavior, or feeling (get tough ~ him) (angry ~
him) c: in respect to: so far as concerns (on friendly terms ~ all
nations) d — used to indicate the object of an adverbial expression of
imperative force (off ~ his head) e: OVER, ON (no longer has any
influence ~ them) f: in the performance, operation, or use of (the
trouble ~ this machine) 3 a — used as a function word to indicate
the object of a statement of comparison or equality (a dress identical ~
her hostess's) b — used as a function word to express agreement or
sympathy (must conclude, ~ you, that the painting is a forgery) c
: on the side of: FOR (if he's for lower taxes, I'm ~ him) d: as well
as (can pitch ~ the best of them) 4 a — used as a function word to
indicate combination, accompaniment, presence, or addition (heat milk
~ honey) (went there ~ her) (his money, ~ his wife's, comes to a
million) b: inclusive of (costs \$5 ~ the tax) 5 a: in the judgment
or estimation of (stood well ~ her classmates) b: in or according to
the experience or practice of (~ many of us, our ideas seem to fall by
the wayside — W. J. Reilly) 6 a — used as a function word to indi-
cate the means, cause, agent, or instrumentality (hit him ~ a rock)
(pale ~ anger) (threatened ~ tuberculosis) (he amused the crowd ~
his antics) b archaic: by the direct act of 7 a — used as a function
word to indicate manner of action (ran ~ effort) (acknowledge your
contribution ~ thanks) b — used as a function word to indicate an
attendant fact or circumstance (stood there ~ his hat on) c — used as
a function word to indicate a result attendant on a specified action (got
off ~ a light sentence) 8 (1): in possession of: HAVING (came ~
good news) (2): in the possession or care of (left the money ~ her
mother) b: characterized or distinguished by (a person ~ a sharp
nose) 9 a — used as a function word to indicate a close association
in time (~ the outbreak of war they went home) (mellows ~ time) b
: in proportion to (the pressure varies ~ the depth) 10 a: in spite of
: NOTWITHSTANDING (a really tip-top man, ~ all his wrongheadedness
— H. J. Laski) b: except for (finds that, ~ one group of omissions
and one important addition, they reflect that curriculum — Gilbert
Highet) 11: in the direction of (~ the wind) (~ the grain)

with-al \wi-ˈhəl, -thəl\ adv [ME, fr. *with* + *all* (all)] (13c) 1: to-
gether with this: BESIDES (a supporter of all constructive work and ~
an excellent businessman — A. W. Long) 2 archaic: THEREWITH 3
: on the other hand: NEVERTHELESS

withal prep (14c) archaic: WITH — used postpositively with a relative
or interrogative pronoun as object

with-draw \wi-drō, with-ˈv\ vb — drew \-drū; — drawn \-drōn\;
— drawing \-drōl-ing\ [ME, fr. *with* from + *drawen* to draw] (13c)

1 a: to take back or away: REMOVE (pressure upon educational ad-
ministrators to ~ academic credit — J. W. Scott) b: to remove from
use or cultivation c: to remove (money) from a place of deposit d
: to turn away (as the eyes) from an object of attention (*withdrew* her
gaze) e: to draw (as a curtain) back or aside 2 a: to remove from
consideration or set outside a group (*withdrew* his name from the list of
nominees) (*withdrew* their child from the school) b: (1): TAKE BACK.

with-draw-al \wi-drō(-ə)\ n (1749) 1 a: the act of taking back or
away something that has been granted or possessed b: removal from
a place of deposit or investment c (1): the discontinuance of admin-
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and psychological symptoms that follows discontinuance of an addict-
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RETRACT (2): to recall or remove (a motion) under parliamentary
procedure ~ vt 1 a: to move back or away: RETIRE b: to draw
back from a battlefield: RETREAT 2 a: to remove oneself from partic-
ipation b: to become socially or emotionally detached (had *with-*
drawn farther and farther into herself — Ethel Wilson) 3: to recall a
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\\ abet \\ kitten, F table \\r further \\a ash \\ā ace \\ā mop, mar
\\ū out \\ch chin \\e bet \\ē easy \\g go \\h hit \\ī ice \\j job
\\j sing \\ō go \\ō law \\ōi boy \\th thin \\th the \\ū foot
\\y yet \\zh vision \\ā, k, ", ce, oe, ue, ū, see Guide to Pronunciation



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